2224.

SUPREME COURT OF THE UNITED STATES.

No. 199.

JOHN JACKSON, PLAINTIFF IN ERROR,

vs.

SAMUEL HALE, GEORGE C. MANNY, & JOHN V. AYER.

IN ERROR TO THE DISTRICT COURT, UNITED STATES, FOR THE DISTRICT OF WISCONSIN.

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Gideon, Print.

UNITED STATES OF AMERICA,
District of Wisconsin.

I, Benjamin K. Miller, clerk of the district court of the United States of America, for the district of Wisconsin, do hereby certify, that I have compared the writings annexed to this certificate, and are true copies of their respective originals now on file, and remaining of record in my office.

In testimony whereof I have hereunto set my hand and duly affixed the seal of said court, at the city of Milwaukie, in the said district of Wisconsin, this fifteenth day of November, in the [L. S.] year of our Lord one thousand eight hundred and fifty-one, and of the independence of the said United States the seventy-sixth.

BENJ'N K. MILLER, *Clerk.*

I, Andrew G. Miller, judge of the district court of the United States of America, for the district of Wisconsin, do hereby certify, that the foregoing attestation by Benjamin K. Miller, the clerk of said court, is in due form, and by the proper officer.

Witness my hand, at the city of Milwaukie, in the State of Wisconsin, this fifteenth day of November, 1851.

A. G. MILLER.

UNITED STATES OF AMERICA,
District of Wisconsin.

Pleas before the honorable Andrew G. Miller, judge of the district court of the United States of America, for the district of Wisconsin.

Be it remembered, that on the eighth day of April, A. D. 1850, came the said John Jackson, by his attorney, Mr. Watkins, and filed in the office of the clerk of said court, in the city of Milwaukie, and within said district of Wisconsin, his certain præcipe for a writ of replevin against Samuel Hale, George C. Manny, and John V. Ayer; which said præcipe is as follows:

United States district court, for the district of Wisconsin.

JOHN JACKSON
vs.
SAMUEL HALE, George C. Manny and John V. Ayer.

The clerk will please issue a writ of replevin in the above entitled

cause, in accordance with affidavit for 4,000 bushels of wheat, of the value of $3,000, that the above defendants detain unjustly.

Yours, &c.,
C. K. WATKINS,
Attorney for plaintiff.

To GEORGE S. WEST, esq., *Clerk, &c.*

And same day an affidavit for replevin was filed in the clerk's office aforesaid by the said plaintiff, as follows:

DISTRICT OF WISCONSIN, *ss.*

Daniel Newhall, of said county, being duly sworn, deposeth and saith: That John Jackson is a resident of the State of New York; that the said John Jackson is lawfully entitled to the possession of certain spring wheat, the quantity whereof is four thousand bushels, and that the said four thousand bushels of spring wheat is unjustly detained by Samuel Hale, George C. Manny, and John V. Ayer, and that the same has not been taken for any tax levied by virtue of any law of this State, nor seized under any execution or attachment against the goods and chattels of said John Jackson; that the above named defendants, Samuel, George, and David, are residents of this State, and detain above property specified as aforesaid at Southport, within this State.

And this deponent saith further, that this affidavit is made by this deponent in behalf of and under authority of the said Jackson. And deponent further saith, that the said wheat, in all, as nearly as the same is susceptible of being determined, is of the value of three thousand dollars; and further saith not

DANL. NEWHALL.

Sworn and subscribed, April 8, 1850.
A. G. MILLER, *Judge, &c.*

On filing the præcipe and affidavit aforesaid, a writ of replevin was issued to the marshal, returnable the first Monday of May next; which said writ is in the words and figures following, to wit:

UNITED STATES OF AMERICA,
District of Wisconsin, ss.

[L. S.] The President of the United States of America, to the marshal of the district of Wisconsin, greeting:

Whereas John Jackson complains that Samuel Hale, George C. Manny, and John V. Ayer do unjustly detain from said John Jackson the following goods and chattels, to wit, four thousand bushels of spring wheat, of the value of three thousand dollars; therefore you are commanded, that if the said John Jackson shall give you security, as required by law, to prosecute the said complaint and to return the afore-

said goods and chattels, if return thereof shall be adjudged, and to pay all such sums of money as may be recovered against him hereupon, that you cause the said goods and chattels to be replevied and delivered to the said John Jackson without delay; and also that you summon the said Samuel Hale, George C. Manny, and John V. Ayer to appear before the judge of the district court of the United States of America, for the district of Wisconsin, at Milwaukie, on the first Monday of May next, if to be found in your district, to answer the said John Jackson in the premises.

Witness the honorable Andrew G. Miller, judge of the district court of the United States of America, for the district of Wisconsin, at the city of Milwaukie, in said district, this eighth day of April, A. D. 1850, and of the independence of these United States the seventy-fourth.

(Signed) GEORGE S. WEST, *Clerk*,
By B. K. MILLER, *Dep.*

CHARLES K. WATKINS, *Attorney*.

Writ filed May 4, 1850.

And the said writ of replevin was returned with an endorsement thereon by the marshal, as follows:

On this 11th day of April, A. D. 1850, I have replevied and taken the spring wheat within mentioned, as by this writ I am commanded, and delivered the property to the plaintiff, and made service by delivering personally to within named defendants severally a copy of this writ, summoning them by law in such case required.

(Signed) C. J. HUTCHINSON, *Marshal*,
By L. H. COTTON, *Deputy*.

And to the said writ of replevin, when returned, was annexed a certificate of appraisers, as follows:

District court of the United States, district of Wisconsin.

JOHN JACKSON
vs.
SAMUEL HALE, George C. Manny, and John V. Ayer.

We, David L. McKinney and James W. Lusk, of the city and county of Kenosha, chosen appraisers by L. H. Cotton, United States deputy marshal of district of Wisconsin, to estimate and appraise the value of four thousand bushels of spring wheat, taken by said marshal upon a writ of replevin, issued out of the district court of the United States, for the district of Wisconsin, wherein John Jackson is plaintiff, and Samuel Hale, George C. Manny, and John V. Ayer are defendants, do estimate and appraise the value of said wheat, on the 11th day

of April, A. D. 1850, at sixty-five cents per bushel, and the total value thereof at two thousand and six hundred dollars.

(Signed) JAMES W. LUSK,
D. L. McKINNEY.

Subscribed and sworn to before me, this 11th day of April, 1850.

(Signed) H. TUTTLE,
Justice of the peace of the city and county of Kenosha, and State of Wisconsin.

And to the said writ of replevin, when returned, was annexed a bond to the marshal, as follows:

Know all men by these presents, that we, Daniel Newhall, Thomas P. Williams, and John Webb, in the county of Milwaukie, and State of Wisconsin, are held and firmly bound unto Champion I. Hutchinson, marshal of the district of Wisconsin, in the sum of six thousand dollars, to be paid to the said Champion I. Hutchinson, marshal, &c., aforesaid, or to his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated the eighth day of April, in the year of our Lord one thousand eight hundred and fifty.

Whereas certain goods, to wit, four thousand bushels of spring wheat, was this day taken by the above named Champion by virtue of a writ of replevin, issued out of the district court of the United States of America, for the district of Wisconsin, wherein John Jackson is plaintiff, and Samuel Hale, George C. Manny, and John V. Ayer, are defendants.

Now, therefore, the condition of this obligation is such, that the said plaintiff shall prosecute the suit by said writ commenced to effect, and without delay, and if the defendants recover judgment against him in the action he will return the same property, if return thereof be adjudged, and will pay to the defendants all such sums of money as may be recovered against him by such defendants, in the said action for any cause whatever, then this obligation to be void, else to remain in full force and virtue.

(Signed) DANIEL NEWHALL, [SEAL.]
THOS. P. WILLIAMS, [SEAL.]
JOHN WEBB. [SEAL.]

STATE OF WISCONSIN,
Milwaukie county, ss.

Daniel Newhall and Thomas P. Williams, of said county, being duly sworn, each for himself, saith, that he is worth the amount of the penalty of the annexed bond, over and above all debts.

(Signed) DANIEL NEWHALL,
THOS. P. WILLIAMS.

Sworn and subscribed, April 8, 1850.
(Signed) A. G. MILLER,
Judge, &c.

And afterwards, to wit, on the ninth day of said month of May, A. D. 1850, came the said plaintiff and filed his declaration, as follows:

United States district court, for the district of Wisconsin.

JOHN JACKSON, plaintiff,
vs.
SAMUEL HALE, George C. Manny, and John V. Ayer.

Of the first Monday of May, A. D. 1850.

Samuel Hale, George C. Manny, and John V. Ayer, citizens of, and residents in, the State of Wisconsin, were summoned to answer John Jackson, citizen of, and resident in, the State of New York, wherefore they wrongfully detain four thousand bushels of spring wheat. And thereupon the above named plaintiff, who is a citizen of the State of New York, by Charles K. Watkins, his attorney, complains of the above named defendants, who are citizens of the State of Wisconsin, for that the said defendants, on the fifteenth day of March, A. D. 1850, at the city of Kenosha, in the county of Kenosha, lately known as the village of Southport, in the county of Racine, in the State and district of Wisconsin, and within the jurisdiction of this court, received four thousand bushels of spring wheat, being of great value, to wit, of the value of three thousand dollars, from one Champion I. Hutchinson, to be delivered to the above named John Jackson when thereunto afterwards requested, and the said defendants, although requested so to do, have not delivered the same to the said plaintiff, but refuses so to do, and detain the same property to the damage of the plaintiff of five thousand dollars, and therefore he brings suit, &c.
(Signed) CHARLES K. WATKINS,
Plaintiff's attorney.

Declaration, filed May 9, 1850.

And afterwards, to wit, on the first Monday of June, A. D. 1850, a rule having been entered on the said defendants to plead within twenty days or their default will be entered. On the 21st day of said month of June, came the said defendants by their attorney, and filed their pleas as follows:

District court of the United States, for the district of Wisconsin.

SAMUEL HALE,
George C. Manny, and
John V. Ayer,
ads.
John Jackson.
} July term, 1850.

And the said defendants, Samuel Hale, George C. Manny, and John

V. Ayer, by Frederick S. Lovell, their attorney, come and defend the force and injury, when, &c., and say that they do not detain the goods and chattels in said plaintiff's declaration mentioned and set forth, or any *or any* part thereof in manner and form as the said plaintiff hath above thereof complained against them, and thereof they put themselves upon the country, &c.

And for a further plea in this behalf, by leave of the court here first had and obtained, the said defendants say that the said plaintiffs ought not to have or maintain his action aforesaid against them, because they say, that the said goods and chattels in the said plaintiff's declaration mentioned and set forth at the time when, &c., were the property of Benjamin C. Adams, and William P. Adams, John Ames, Charles Allen, David J. Best, and William J. Allen, John C. Burr, Stephen Buel, Dominick Rhoderick, Calvin Blodgett, James Bayley, Thomas Boyle, Richard Bentley, Maria Courtney, William Cuppen, Joseph C. Crumb, John M. Cramer, Lucius A. Cook, John Cain, James Coyne, Harvey Durkee, Seth Doolittle, Norman L. Donaldson, and Timothy Smith, Benjamin Durham, Robert Eddy, Samuel Eddy, Richard Fagan, Haines French, Timothy H. Fellons, John Fish, John M. Fellons, John Fox, Theophilus S. Greenwood, Patrick Gaffenney, Aaron Griswold, James Greene, John Gallagher, George W. Head, Dewitt Campbell, and Daniel Head, Henry W. Hubbard, and Edward W. Blin, Louis P. Harvey, Samuel Hatch, William R. Higgins, Norman Hart, Fitch A. Higgins, John Hackney, Patrick Hadicum, Philander Judson, Elisha Kitley, Asa Lewis, P. Waldo Lake, jr., John Ladd, Edwin A. Lay, Nelson Lay, and Elisha Lee, Samuel Lawson, James Moran, Samuel M. Coy, Charles Walker, John D. McIntyre, John McDonald, James Melendy, Nathan Marshall, Robert Moore, Michael Madden, Lansing B. Nickols, Alva Newman, Charles O'Niel, James O. Pease, Thomas L. Parker, Horatio L. Putnam, Ebenezer Pomroy, Morris Pomroy, Alvin H. Parker, John Benny, John Porch, Zachariah Paddock, Charles Roddle, Julius H. Rhoades, Harvey Russell, Thomas Rhoades, Mortimer Shearer, Lemuel Starr, John B. Stockholm, Samuel Stevenson, Abner G. Stevenson, Walter Sopa, William H. Sibley, Benjamin P. Sayles, Thomas R. Sheldon, Jonathan Spencer, E. Baker, Treadwell William Tobin, Joseph G. Taylor, Edward G. Torry, Calvin Truesdale, John Tuttle, John W. Voak, George Vinton, Peter W. Votts, Alexander B. Wadsworth, Samuel H. Walker, Levi N. Webb, David Williams, Hiram Weaver, William Williams, Lorenzo A. Woods, Richard Wray, Aaron Woolver, Alexander H. Merrill, Frederick W. Merrill, John Whittey, Alexander Yale, and the said defendants, and not of the said plaintiff, as in said plaintiff's declaration supposed. And this the said defendants are ready to verify. Wherefore they pray judgment, &c., and also for a return of said goods and chattels, together with costs in this behalf according to the statute in such case made and provided &c.,

And for further plea in this behalf by leave of the court here, &c., the said defendants say, that the said plaintiff ought not to have or

maintain his aforesaid action against them, because they say, that at the time when, &c., the said goods and chattels in said plaintiff's declaration mentioned, as to parcel thereof, to wit, three thousand bushels of wheat in said declaration mentioned, was the property of one Benjamin C. Adams and William P. Adams, and not the property of said plaintiff; and as to other parcel thereof, to wit, one thousand bushels of said wheat, was the property of one Isaac C. Barlow, and not of said plaintiff; and as to other parcel of said wheat, to wit, one thousand bushels thereof, was the property of one John C. Burr, and not of said plaintiff; and as to other parcel of said wheat, to wit, one thousand bushels thereof was the property of one Charles Walker, and not of the said plaintiff; and as to other parcel thereof, to wit, one thousand bushels of said wheat, was the property of one David J. Best and William J. Allen, and not of the said plaintiff; and as to other parcel thereof, to wit, three thousand bushels of the said wheat, was the property of one George W. Head, Dewitt Campbell, and Daniel Head, and not the property of said plaintiff; and as to all the remaining part and parcel of said goods and chattels, to wit, one thousand bushels of said wheat, was the property of said defendants, and not of the said plaintiff, and this the said defendants are ready to verify. Wherefore they pray judgment, &c., and for a return of said goods and chattels, and their costs in this behalf, according to the statute in such case made and provided.

And for a further plea in this behalf by leave of the court here, &c., the said defendants say, that the said plaintiff ought not to have or maintain his aforesaid action against them, because they say that the said goods and chattels in said plaintiff's declaration mentioned at the time when, &c., was the property of Benjamin C. Adams and William P. Adams, and not the property of the said plaintiff, as in and by said plaintiff's declaration supposed, and this they, the said defendants, are ready to verify. Wherefore they pray judgment, &c., and for a return of said goods and chattels, and for their costs in this behalf, according to the form of the statute, &c.

And for a further plea in this behalf, by leave of the court here, &c., the said defendants say, that the said plaintiff ought not to have or maintain his action aforesaid against them, because they say that the said goods and chattels in said plaintiff's declaration mentioned at the time when, &c., was the property of one Champion I. Hutchinson, and not the property of the said plaintiff, and this they are ready to verify. Wherefore they pray judgment, &c., and for a return of the said goods and chattels, and for their costs in this behalf, according to the form of the statute in such case made and provided.

And for a further plea in this behalf, by leave of the court here, &c., the said defendants say, that the said plaintiff ought not to have or maintain his action aforesaid against them, because they say that the said goods and chattels in said plaintiff's declaration mentioned at the time when, &c., was the property of the said defendants, and not the property of the said plaintiff, as in and by the said plaintiff's declaration is

supposed, and this they are ready to verify. Wherefore they pray judgment, &c., and for a return of said goods and chattels, and for their costs, according to the form of the statute in such case made and provided.

(Signed) F. S. LOVELL,
Defendants' attorney.

I certify that the foregoing special pleas, firstly, secondly, thirdly, fourthly, and fifthly above pleaded, are well founded, and in my opinion necessary to be pleaded for the defence of the above named defendants.

(Signed) F. S. LOVELL,
Attorney, and of counsel for defts.

Pleas filed June 21, 1850.

And afterwards, to wit, on the thirteenth day of July, A. D. 1850, came the said plaintiff, by his said attorney, and filed his replication, as follows:

District court of the United States, for the district of Wisconsin.

JOHN JACKSON
vs.
SAMUEL HALE, George C. Manny, and John V. Ayre.

And the said plaintiff, as to the said plea of the defendants first above pleaded, and whereof they have put themselves upon the country, doth the like.

And the said plaintiff, as to the plea by the said defendants secondly above pleaded, by leave of the court here for this purpose first had and obtained, according to the form of the statute in such case made and provided, says that he, the said plaintiff, ought not to be barred from having and maintaining his aforesaid action against the said defendants, by reason of any thing in said plea alleged, because, as before the said plaintiff saith, the same goods and chattels mentioned were the property of the said plaintiff, and not the property of the said defendants; and the persons named in said plea secondly above pleaded, in manner and form as the said defendants have above *above* in their second plea alleged; and this the said plaintiff prays may be inquired of by the country. And the said plaintiff, as to the plea by the said defendants thirdly above pleaded, by like leave of the court, and according to the statute in such case provided, says that the said plaintiff ought not to be barred from having and maintaining his aforesaid action against the said defendants by reason of anything in said plea alleged, because as before the said plaintiff saith, that the said goods and chattels were the property of the plaintiff, and not as to parcel thereof the property of Benjamin C. Adams and William P. Adams;

and as to other parcel thereof, the property of John C. Burr; and as to other parcel thereof, the property of Charles Walker; and as to other parcel thereof, the property of J. Best, and Williams and Allen; and as to other parcel thereof, the property of George W. Head, Dewitt Campbell, and David Head; and as to other parcel thereof, the property of the said defendants, in manner and form as the said defendants have in that behalf in the said third plea above alleged. And this the said plaintiff prays may be inquired of by the country. And the said plaintiff, by like leave of the court, according to the statute in such case provided, as to the plea of said defendants fourthly above pleaded, says that he, the said plaintiff, ought not to be barred from having and maintaining his aforesaid action against the said defendants, by reason of anything in said fourth plea alleged, because, as before, he saith that the goods and chattels were the property of the said plaintiff, and not the property of the persons named in said fourth plea in that behalf alleged, and this the plaintiff prays may *me* inquired of by the country.

And the said plaintiff, by like leave of the court, according to the statute, &c., as to the plea of the said defendants fifthly above pleaded, says that the said plaintiffs ought not to be barred from having and maintaining his aforesaid action against the said defendants by reason of anything in said fifth plea alleged, because, as before, he saith that the said goods and chattels were the property of the said plaintiff, and not the property of the individuals in said last plea in that behalf alleged; and this the said plaintiff prays may be inquired of by the country.

C. K. WATKINS,
Plaintiff's attorney.

And afterwards, to wit, on the second day of September, A. D. 1850, came into the clerk's office aforesaid the said parties, by their counsel, and a rule having been heretofore entered by the plaintiff for a commission and interrogatories and cross interrogatories filed, and all the requisites of the rules of court being complied with, a commission was issued, as follows:

UNITED STATES OF AMERICA,
District of Wisconsin, ss.

[L. S.] The President of the United States of America, to O. H. Fitch, greeting:

Know ye, that in confidence of your prudence and fidelity, you have been appointed, and by these presents you are invested with full power and authority, to examine John M. Faulkner on his corporal oath, as a witness in a cause depending in the district court of the United States for the district of Wisconsin, wherein John Jackson is plaintiff, and Samuel Hale, George C. Manny, and John V. Ayer are defendants, on the part of the plaintiff, upon the interrogatories annexed to this commission; and therefore you are hereby commanded that you, at certain days and places to be appointed by you for that purpose, do cause the

said John M. Faulkner to come before you, and then and there examine him on oath upon the said interrogatories; and that you take such examination and reduce the same into writing, and return the same annexed to this writ, closed up under your seal, into the said district court of the United States, before the judge thereof, with all convenient speed.

Witness the honorable Andrew G. Miller, judge of the district court of the United States of America, for the district of Wisconsin aforesaid, at Milwaukie, in said district, this second day of September, A. D. 1850, and of the independence of the United States the seventy-fifth.

GEO. S. WEST, *Clerk.*

And to the said commisssion was annexed the following rules for taking the same, viz:

On the receipt of the commission, made out as aforesaid, by any one of the commissioners named, he shall give notice to the other commissioners named therein, of the time and place of taking the depositions, if possible, and if any of the commissioners are absent at the execution of said commission, any one or more present may proceed to execute the same (unless otherwise expressly directed therein) as if all were present; but they must certify that those absent have been duly served with notice of the time and place of executing said commission, or the reason for their not being so notified.

The persons to whom such commission shall be directed, or any one or more of them, unless otherwise expressly directed therein, shall execute the same as follows:

First. They, or any of them, shall publicly administer an oath to the witnesses named in the commission; that the answers given by such witnesses to the interrogatories proposed to them shall be the truth, the whole truth, and nothing but the truth.

Second. They shall cause the examination of each witness to be reduced to writing, and to be subscribed by him, and certified by such of the commissioners as are present at the taking of the same.

Third. If any exhibits are produced and proved before them, they shall be annexed to the depositions to which they relate, and shall in like manner be subscribed by the witness proving the same. (This section must be understood to refer to such papers as can be produced upon the examination. If the paper referred to be a record not subject to the control of the party or the commissioners, it will be sufficient to annex a copy, and the original may be produced on the trial separate from the commission.

Fourth. The commissioner or commissioners shall subscribe each sheet of the depositions, and annex all the depositions and exhibits to the commission, upon which the return shall be endorsed, and shall close them up under their or his seals, and shall address the same, when so closed, to the clerk of the court from which the commission issued, at his place of residence, with the style of the suit.

Fifth. If there is or is not a direction on the commission to return the

same by mail, they or he shall immediately deposite the packet so directed in the nearest post office.

Sixth. If there be a direction on the commission to return the same by an agent of the party who sued out the same, the packet so directed shall be delivered to said agent.

And to the said commission was annexed the following interrogatories, viz:

JOHN JACKSON
vs.
SAMUEL HALE, George C. Manny, and John V. Ayer.

Interrogatories to be administered on the part of the plaintiff to John M. Faulker, non resident witness, of and residing in Ashtabula, in the county of Ashtabula, in the State of Ohio, under and by virtue of a commission out of and under the seal of said district court, and the same to be used in evidence on the trial of the above entitled cause.

First. What is your age and occupation?

Second. Are you acquainted with Champion I. Hutchinson; if yea, how long have you known him, and at what place did he reside?

Third. Look upon the paper writing now produced and shown to you at this the time of your examination, marked A, annexed, purporting to be a receipt; do you know the handwriting there subscribed, by whom was it signed, and was the same or not executed in your presence; if yea, by whom, where, and when was the same executed?

Fourth. To whom was the said paper writing delivered, and by whom was it delivered, and when and where? Declare.

Fifth. Was the consideration, as therein expressed, paid, and for what, to whom, and by whom paid, when and where? Declare and state, if any, what consideration was paid.

Sixth. Are you acquainted with Hubbard, Faulkner & Co., in said writing named; if yea, give the names at length of said persons, and state whether they were partners in business at the time of the date thereof, and what business; and whether you, the witness, are the same person named therein, and was a member of said firm.

Seventh. Did you sell the wheat mentioned in said paper writing; if yea, to whom, the residence of such vendee, the time of sale, and whether you was at that time a partner of said firm?

Eighth. Have you or the said firm removed any part of the wheat at any time?

Ninth. Is there any liability by you, or of said firm in said receipt named, as vendor or vendors of said wheat; if none, state how discharged, and if by writing, produce the same, to be marked and annexed hereto as part of your testimony; and by whom executed, and by whom the same was delivered to you, and where.

Tenth. Have you or the said firm any interest in the event of this suit?

C. K. WATKINS, *Pl'ffs' att'y,*
Milwaukie, Wisconsin.

Paper writing referred to, marked A.

"Received in store, Southport, January 19, 1850, for account of Messrs. Hubbard, Faulkner & Co., four thousand bushels of spring wheat, deliverable on board vessel free of charge on return of this receipt, and not insured against fire.

"4,000 bushels wheat.

"C. I. HUTCHINSON.

"Endorsed—Hubbard, Faulkner & Co."

And to the said commission was annexed the following cross interrogatories, viz:

SAMUEL HALE, George C. Manny, and John V. Ayer.
ads.
JOHN JACKSON.

District court of the United States, for the district of Wisconsin.

Cross interrogatories to be administered on the part of the above defendants to the above named John M. Faulkner, under and by virtue of the commission connected herewith.

Interrogatory first. What consideration is referred to by direct interrogatory No. 5?

Interrogatory second. To whom does the paper referred to in direct interrogatories No. 3, 4, and 5 now belong? If to the above plaintiff, when was the same sold or transferred to him; how transferred; what was the consideration of the transfer; how much was paid by plaintiff for the same; how much was required to be paid; was the transfer absolute or conditional?

Interrogatory third. Was the purchase of the paper referred to in direct interrogatory 3, 4, and 5, made by the above plaintiff after Mr. C. I. Hutchinson had left the State of Wisconsin, or after he sold the warehouse in the city of Kenosha? Was the above named plaintiff knowing to the fact that at the time he, the said plaintiff, *bot* the said receipt, Mr. Champion I. Hutchinson had no wheat in his warehouse to deliver on his receipt; did you so inform him at that time, or previous? State in full; state whether you sold him, said plaintiff, the receipt in question, or did you sell it to him and others; if yea, to whom did you sell the same? State their names in full.

Interrogatory fourth. Was there ever any sale of wheat referred to in direct interrogatory 7 by yourself to said plaintiff; or did you sell the receipt referred to, and copy given in direct interrogatories without any reference to the amount of wheat called for by said receipt?

Interrogatory fifth. Was any wheat ever delivered by Mr. C. I. Hutchinson to you as called for by said receipt?

Interrogatory sixth. Have you, or the firm referred to in interrogatory 9, ever received or removed any wheat delivered by Mr. C. I. Hutchinson to you, or any one for you, under and by virtue of said

receipt; or have you ever had any delivered to you, or any one for you, for said receipt?

Interrogatory seventh. What was the terms of the sale of the receipt referred to in direct interrogatories; for how much was the same sold; how much money was paid; how much was to be paid; what were the terms of the payment, and in what manner, if any, are you interested in the event of this suit? State fully and immediately.

Interrogatory eighth. Did you sell the wheat referred to in direct interrogatory 7, or the receipt referred to? State.

F. S. LOVELL, *defendant's attorney.*

And to the said commission was annexed a certificate of the clerk, as follows:

UNITED STATES OF AMERICA,
District of Wisconsin, ss.

I, George S. West, clerk of the district court of the United States of America, for the district of Wisconsin, do hereby certify, that the writings annexed to this certificate are true copies of their respective originals on file and remaining of record in my office.

In testimony whereof I have caused the seal of said court to be hereunto affixed, at the city of Milwaukie, in the district of [SEAL.] Wisconsin, this second day of September, A. D. 1850, and of the independence of the said United States the seventy-fifth.

GEO. S. WEST, *Clerk.*

And afterwards, to wit, on the sixteenth day of October, A. D. 1850, the said commission was received from the post office and filed, and same day the same was opened and published in open court, and on the said commission was endorsed the following return:

"The execution of this commission appears in certain schedules hereunto annexed.

O. H. FITCH, *Commissioner.*"

Which said schedules follow in these words:

Deposition of John M. Faulkner, sworn and examined the tenth day of October, in the year one thousand eight hundred and fifty, at Ashtabula, in the county of Ashtabula, and State of Ohio, under and by virtue of a commission issued out of the district court of the United States of America, for the district of Wisconsin, in a certain cause therein depending, wherein John Jackson is plaintiff, and Samuel Hale, George C. Manny, and John V. Ayer are defendants, as follows:

John M. Faulkner, of Ashtabula, in the county of Ashtabula, in the State of Ohio, of lawful age, being duly and publicly sworn, pursuant to the directions hereto annexed, and examined on the part of the plaintiff, doth depose and say as follows, to wit:

1. To the first interrogatory he saith, that he is thirty-six years of age, and by occupation a produce dealer.

2. To the second interrogatory he saith, that he is acquainted with Champion I. Hutchinson, and has been for two or three years.

3. To the third interrogatory he saith, that he does know the handwriting to said paper subscribed; that said paper writing marked A, was subscribed by Champion I. Hutchinson in the presence of this deponent; it was executed by the said Champion I. Hutchinson at the time of the date of the paper marked A, in said interrogatory mentioned.

4. To the fourth interrogatory he saith, that said paper writing was delivered to him by said Champion I. Hutchinson at the day of the date thereof, to wit, on the nineteenth day of January, A. D. 1850, at Southport, Wisconsin.

5. To the fifth interrogatory he saith, that he, for and in behalf of the firm of Hubbard, Faulkner & Co., paid for the wheat therein mentioned twenty-six hundred and forty dollars, to the said Champion I. Hutchinson, at the date of said writing, marked A, at Southport, in Wisconsin.

6. To the sixth interrogatory he saith, that he is acquainted with Hubbard, Faulkner & Co., in said writing named; that said firm was composed of Buckley Hubbard, John M. Faulkner, Lewis B. Austin, and George W. Gould, who were partners in business at the time of the date of said writing, in the purchase and sale of country produce, and witness is the same person named therein, and was at the time of the date thereof a member of said firm of Hubbard, Faulkner & Co.

7. To the seventh interrogatory he saith, that he sold and transferred, in behalf of said firm of Hubbard, Faulkner & Co., said paper writing (marked A,) commonly called a warehouse receipt, to John Jackson, of Lockport, in the State of New York, on the ninth day of March, A. D. 1850, at which time this deponent was a member of the firm of Hubbard, Faulkner & Co.

8. To the eighth interrogatory he saith, that neither he nor said *said* firm have removed any part of said wheat at any time.

9. To the ninth interrogatory he saith, that there is no liability by him or said firm in said receipt named as vendor or vendors of said wheat; that said firm was discharged by the written agreement of said John Jackson, executed by him and delivered to this deponent on the 9th day of March, A. D. 1850, at Milwaukie, in the State of Wisconsin.

10. To the tenth interrogatory he saith, that neither he nor said firm have any interest whatever in this suit.

O. H. Fitch, *Commissioner.*

1. To the first cross interrogatory he saith, he supposes the purchase money of the wheat mentioned in said warehouse receipt.

2. To the second cross interrogatory he saith, that he does not know, but supposes to John Jackson, to whom he sold and transferred it on the ninth day of March, 1850, for the consideration of ten hundred and fifty-six dollars, which amount was all paid by said John Jackson

at the time of the transfer as above stated; said transfer was absolute, and not conditional.

3. To the third cross interrogatory he saith, that the purchase was made by plaintiff before C. I. Hutchinson had left the State of Wisconsin, but whether it was after he had sold the warehouse in the city of Kenosha he is unable to say; this deponent is unable to state whether said plaintiff was knowing to the fact, that at the time he bought said receipt, that C. I. Hutchinson had no wheat in his warehouse to deliver on said receipt or not; deponent does not recollect that he ever informed said plaintiff whether there was or was not any wheat in said warehouse to be delivered on said receipt; deponent sold the receipt in question to John Jackson, and him only.

4. To the fourth cross interrogatory he saith, that he sold said warehouse receipt.

5. To the fifth cross interrogatory he saith, that no wheat was ever delivered to him by C. I. Hutchinson as called for by said receipt.

6th. To the sixth cross interrogatory he saith, that neither he nor said firm referred to ever received or removed any wheat delivered by C. I. Hutchinson to him, or any one for him, under or by virtue of said receipt, and never had any delivered to him, this deponent, or any one for him, on said receipt.

7th. To the seventh cross interrogatory he saith, that the terms of the sale of the said receipt were ten hundred and fifty-six dollars cash in hand at the time of sale, which amount was paid to him at the time of sale. This deponent further saith, that he is not interested in the event of this suit in any manner.

8th. To the eighth cross interrogatory he saith, that he sold the receipt referred to, and all the interest of Hubbard, Faulkner & Co. therein.

J. M. FAULKNER.

Examination taken, reduced to writing, and by the witness subscribed and sworn to, this tenth day of October, A. D. 1850, before

O. H. FITCH,
Commissioner.

And afterwards, to wit, at a special term of the district court of the United States of America, for the district of Wisconsin, begun and held, according to law, at the court-room in the city of Milwaukie, and within the district of Wisconsin, on the second Monday, being the fourteenth day of October, A. D. 1850, present the honorable Andrew G. Miller, judge of said court, presiding.

On the thirteenth day of the term, to wit, on the twenty-eighth day of said month of October, A. D. 1850, the following proceedings were had, to wit:

JOHN JACKSON
vs.
SAMUEL HALE, George C. Manny, John V. Ayer. } At law.

This day came the parties, by their counsel, and the several issues

herein joined came on to be tried. Whereupon a jury was called to try the same, who came, to wit, J. B. Selby, sen., Joseph Shouts, Charles P. Everts, Elisha W. Edgerton, J. B. Zander, Thomas Severance, S. D. Cowles, Thomas Brewer, T. D. Butler, Priam B. Hill, James Fagan, and Henry Conklin, twelve free, honest, and lawful men of the district, who were severally sworn and empannelled, and charged by the court. And the said jurors, of the jury aforesaid, upon their oaths aforesaid, respectively, do find the several issues in favor of the defendants; and they do further find the property *replevined* is in Benjamin C. Adams and William P. Adams, as the said defendants have herein pleaded; and they do further find the value of the property *replevined* to be two thousand six hundred and forty dollars, and do assess the damages for the detention thereof at the sum of four hundred dollars.

And afterwards, to wit, on the fifteenth day *day* of said term, to wit, on the 30th day of said month of October, A. D. 1850, the following other proceedings were had, to wit:

JOHN JACKSON
vs.
SAMUEL HALE, George C. Manny, and John V. Ayer. } At law.

This day came the plaintiff, by his counsel, and moved the court for a new trial of the issue herein, for reasons filed; which said motion is as follows:

JOHN JACKSON
vs.
HALE, Manny et als.

United States district court.

And the said plaintiff, by C. K. Watkins, his attorney, now comes into court and files his motion for a new trial, &c., in this cause, and assigns for reason the following causes, &c. That there is error in this cause, for that the instructions of the court to the jury was, that if the defendants had goods set apart to them before the same was taken on the writ, that then they could hold them as against the prior warehouse receipt. That after a confusion of the goods of several bailees, the bailor may distribute to one or more to the exclusion of others; and that such distribution confers a title. Second. That the court, in other respects, misdirected the jury. Third. That there was error in the admission of testimony objected to by the plaintiff. Fourth. That the verdict of the jury is against the evidence in the case. The damages for the detention are not rested on any principle of law in this action, and are excessive.

C. K. WATKINS,
Plaintiff's attorney.

The two first causes assigned above are withdrawn.

C. K. WATKINS.

And afterwards, on the nineteenth day of the term, to wit, on the fourth day of November, A. D. 1850, the following other proceedings were had, to wit:

JOHN JACKSON
vs.
SAMUEL HALE, George C. Manny, and John V. Ayer. } At law.

This day came the parties by their counsel, and the motion for a new trial herein being argued, the defendants remitted the sum of two hundred and ninety-nine dollars of the damages assessed by the jury for the detention of the property replevined, so as to leave the said damages the sum of one hundred and one dollars, being the interest on the said property from the time of the service of the writ, until the time of trial; and on consideration whereof, it is ordered by the court that the said motion be, and is hereby overruled. And on the motion of the said defendants by their counsel, it is considered and adjudged by this court now here, that they have and recover for the use of Benjamin C. Adams and William B. Adams, of the said John Jackson and Daniel Newhall, Thomas P. Williams and John Webb, his sureties, in the replevin bond the said several sums of two thousand six hundred and forty dollars, the value of the property replevined so as aforesaid found by the jury, as well as the sum of one hundred and one dollars, the damages aforesaid, together with fifty-one dollars and thirty-cents, their costs about their said defence in this behalf by them expended, and that they have execution therefor.

And afterwards, to wit, on the 12th day of January, A. D. 1851, came the said plaintiff by his attorney, and filed his judgment record as follows:

District court of the United States, for the district of Wisconsin.

Pleas before the judge of the district court of the United States, for the district of Wisconsin, of the term of October, in the year one thousand eight hundred and fifty.

Witness: Hon. Andrew G. Miller, judge.

GEORGE S. WEST, esq., *Clerk*.

DISTRICT OF WISCONSIN, *ss.*

Be it remembered, that on the ninth day of May last, before this same term, to wit, A. D. 1850, before the honorable Andrew G. Miller, judge of the district court of the United States of America, for the district of Wisconsin, comes John Jackson, by Charles K. Watkins, his attorney, and files in the office of the clerk of said court at Milwaukie, in said district, according to the rules and practice of the said court, his certain declaration against Samuel Hale, George C. Manny, and John V. Ayer, who have been duly summoned, &c., of a plea wherefore the said defendants unjustly detain certain goods and chattels therein mentioned, which said declaration follows in these words, to wit:

Samuel Hale, George C. Manny, and John V. Ayre, citizens of, and residents in, the State of Wisconsin, were summoned to answer John Jackson, citizen of, and resident in, the State of New York, wherefore they wrongfully detain four thousand bushels of spring wheat; and thereupon the above named plaintiff, who is a citizen of the State of New York, by Charles K. Watkins, his attorney, complains of the above named defendants, who are citizens of the State of Wisconsin, for that the said defendants, on the fifteenth day of March, A. D. 1850, at the city of Kenosha, in the county of Kenosha, lately known as the village of Southport, in the county of Racine, in the State and district of Wisconsin, and within the jurisdiction of this court, received four thousand bushels of spring wheat, being of great value, to wit, of the value of three thousand dollars, from one Champion I. Hutchinson, to be delivered to the above named John Jackson when thereunto afterwards requested; and the said defendants, although requested so to do, have not delivered the same to the said plaintiff, but refuses so to do, and detains the same property to the damage of the plaintiff of five thousand dollars, and therefore he brings suit, &c.

CHARLES K. WATKINS,
Plaintiff's attorney.

And the said defendants, Samuel Hale, George C. Manny, and John V. Ayer, by Frederick S. Lovell, their attorney, come and defend the force and injury, when, &c., and say that they do not detain the goods and chattels in said plaintiff's declaration mentioned and set forth, or any *or any* part thereof, in manner and form as the said plaintiff hath above thereof complained against them, and thereof they put themselves upon the country, &c.

And for a further plea in this behalf, by leave of the court here first had and obtained, the said defendants say, that the said plaintiff ought not to have or maintain his action aforesaid against them, because they say, that the said goods and chattels, in the said plaintiff's declaration mentioned and set forth, at the time when, &c., were the property of Benjamin C. Adams and William P. Adams, John Ames, Charles Allen, Daniel J. Best and William J. Allen, John C. Burr, Stephen Buel, Dominick Roderick, Calvin Blodgett, James Bailey, Thomas Boyle, Richard Bently, Maria Courtney, William Cuppen, Joseph C. Crumb, John M. Cramer, Lucius A. Cook, John Cain, James Coyne, Harvey Durkee, Seth Doolittle, Norman L. Donaldson and Timothy Smith, Benjamin Dunham, Robert Eddy, Samuel Eddy, Richard Fagan, Haines French, Timothy H. Fellows, John Fish, John M. Fellows, John Fox, Theophilus S. Greenwood, Patrick Gaffennez, Aaron Griswold, James Greene, John Gallagher, George W. Head, DeWitt Campbell and Daniel Head, Henry W. Hubbard and Edward W. Blin, Louis P. Harvey, Samuel Hatch, William R. Higgins, Norman Hart, Fitch A. Higgins, John Hackney, Patrick Hadicum, Philander Judson, Elisha Kitley, Asa Lewis, P.

Waldo Lake, jr., John Ladd, Edwin A. Lay, Nelson Lay and Elias Lee, Samuel Lawson, James Moran, Samuel McCoy, Charles Walker, John D. McIntyre, John McDonald, James Melendy, Nathan Marshall, Robert Moore, Michael Madden, Lansing B. Nickols, Alva Newman, Charles O'Niel, James O. Pease, Thomas L. Parker, Horatio L. Putnam, Ebenezer Pomeroy, Morris Pomeroy, Alvin H. Parker, John Benny, John Porch, Zachariah Paddock, Charles Roddle, Julius H. Rhoades, Harvey Russell, Thomas Rhoades, Mortimer Shearer, Lemuel Starr, John B. Stockholm, Samuel Stevenson, Abner G. Stevenson, Walter Soper, William H. Sibley, Benjamin P. Sayles, Thomas R. Sheldon, Jonathan Spencer, E. Baker Treadwell, William Tobin, Joseph G. Taylor, Edward G. Terry, Calvin Truesdale, John Tuttle, John W. Voak, George Vinton, Peter W. Votts, Alexander B. Wadsworth, Samuel H. Walker, Levi N. Webb, David Williams, Hiram Weaver, William Williams, Lorenzo A. Woods, Richard Wray, Aaron Woolever, Alexander H. Merrill and Frederick W. Merrill, John Whitley, Alexander Yale, and the said defendants, and not of the said plaintiff, as in said plaintiff's declaration supposed, and this the said defendants are ready to verify. Wherefore they pray judgment, &c., and also for a return of said goods and chattels, together with costs in this behalf, according to the statute in such case made and provided, &c.

And for further plea in this behalf, by leave of the court here, &c., the said defendants say, that the said plaintiff ought not to have or maintain his aforesaid action against them, because they say, that at the time when, &c., the said goods and chattels, in said plaintiff's declaration mentioned, as to parcel thereof, to wit, three thousand bushels of wheat in said declaration mentioned, was the property of one Benjamin C. Adams and William P. Adams, and not the property of said plaintiff; and as to other parcel thereof, to wit, one thousand bushels of said wheat, was the property of one Isaac C. Barlow, and not of said plaintiff; and as to other parcel of said wheat, to wit, one thousand bushels thereof, was the property of one John C. Burr, and not of said plaintiff; and as to other parcel of said wheat, to wit, one thousand bushels thereof, was the property of one Charles Walker, and not of the said plaintiff; and as to other parcel thereof, to wit, one thousand bushels of said wheat, was the property of one David J. Best and William J. Allen, and not of the said plaintiff; and as to other parcel thereof, to wit, three thousand bushels of the said wheat, was the property of one George W. Head, DeWi t Campbell, and Daniel Head, and not the property of said plaintiff; and as to all the remaining part and parcel of said goods and chattels, to wit, one thousand bushels of said wheat, was the property of said defendants, and not of the said plaintiff, and this the said defendants are ready to verify; wherefore they pray judgment, &c., and for a return of said goods and chattels, and their cost in this behalf, according to the statute in such case made and provided.

And for a further plea in this behalf, by leave of the court here,

&c., the said defendants say, that the said plaintiff ought not to have or maintain his aforesaid action against them, because they say, that the said goods and chattels, in said plaintiff's declaration mentioned, at the time when, &c., was the property of Benjamin C. Adams and William P. Adams, and not the property of the said plaintiff, as in and by said plaintiff's declaration supposed, and this they, the said defendants, are ready to verify; wherefore they pray judgment, &c., and for a return of said goods and chattels, and for their cost in this behalf, according to the form of the statute, &c.

And for a further plea in this behalf by leave of the court here, &c., the said defendants say, that the said plaintiff ought not to have or maintain his action aforesaid against them, because they say that the said goods and chattels in said plaintiff's declaration mentioned at the time when, &c., was the property of one Champion I. Hutchinson, and not the property of the said plaintiff, and this they are ready to verify. Wherefore they pray judgment, &c., and for a return of the said goods and chattels, and for their costs in this behalf, according to the form of the statute in such case made and provided.

And for a further plea in this behalf, by leave of the court here, &c., the said defendants say, that the said plaintiff ought not to have or maintain his action aforesaid against them, because they say that the said goods and chattels in said plaintiff's declaration mentioned, at the time when, &c., was the property of the said defendants and not the property of the said plaintiff, as in and by the said plaintiff's declaration is supposed, and this they are ready to verify. Wherefore they pray judgment, &c., and for a return of said goods and chattels, and for their cost according to the form of the statute in such case made and provided.

F. S. LOVELL, *defendants' attorney.*

I certify that the foregoing special pleas, firstly, secondly, thirdly, fourthly, and fifthly above pleaded, are well founded and, in my opinion, necessary to be pleaded for the defence of the above named defendants.

F. S. LOVELL,
Attorney and of counsel for defendants.

And the said plaintiff, as to the said plea of the defendants first above pleaded, and whereof they have put themselves upon the country, doth the like.

And the said plaintiff, as to the plea by the said defendants secondly above pleaded, by leave of the court here, for this purpose first had and obtained, according to the form of the statute in such case made and provided, says that he, the said plaintiff, ought not to be barred from having and maintaining his aforesaid action against the said defendants by reason of any thing in said plea alleged, because as before the said plaintiff saith, the same goods and chattels mentioned were the property of the said plaintiff, and not the property of the said defendants and the persons named in said plea secondly above pleaded

in manner and form as the said defendants have above *above* in their second plea alleged; and this the said plaintiff prays may be inquired of by the country.

And the said plaintiff, as to the plea by the said defendants thirdly above pleaded, by like leave of the court, and according to the statute in such case provided, says that the said plaintiff ought not to be barred from having and maintaining his aforesaid action against the said defendants by reason of any thing in said plea alleged, because as before the said plaintiff saith, that the said goods and chattels were the property of the said plaintiff, and not as to parcel thereof the property of Benjamin C. Adams and William P. Adams, and as to other parcel thereof the property of John C. Burr, and as to other parcel thereof the property of Charles Walker, and as to other parcel thereof the property of J. Best and Williams and Allen, and as to other parcel thereof the property of George W. Head, Dewitt Campbell, and David Head, and as to other parcel thereof the property of the defendants, in manner and form as the said defendants have in that behalf in the said third plea above alleged; and this the said plaintiff prays may be inquired of by the country.

And the said plaintiff, by like leave of the court according to the statute in such case provided, as to the plea of said defendants fourthly above pleaded, says that he, the said plaintiff, ought not to be barred from having and maintaining his aforesaid action against the said defendants by reason of any thing in said fourth plea alleged, because as before he saith that the goods and chattels were the property of the said plaintiff, and not the property of the persons named in said fourth plea in that behalf alleged; and this the said plaintiff prays may be inquired of by the country.

And the said plaintiff by like leave of the court according to the statute, &c., as to the plea of the said defendants fifthly above pleaded, says that the said plaintiff ought not to be barred from having and maintaining his aforesaid action against the said defendants by reason of any thing in said fifth plea alleged, because as before he saith that the said goods and chattels were the property of the said plaintiff and not the property of the individuals in said last plea in that behalf alleged; and this the said plaintiff prays may be inquired of by the country. C. K. WATKINS, *Plff's att'y.*

And afterwards, to wit, at the city of Milwaukie, in said district, on the twenty-eighth day of October, in the year eighteen hundred and fifty, before the said honorable Andrew G. Miller, judge of the said district court, at the special term thereof, begun and held on the second Monday of October, come into the said court as well the above named plaintiff, as the above named defendants by their respective attorneys above mentioned, and the jurors of the jury summoned to try the said several issues herein, being severally called, came, to wit, Jeremiah B. Selby, sen., Joseph Shouts, Charles P. Everts, Elisha W. Edgerton, Jeremiah B. Zander, Thomas Severance, Sylvester D. Cowles, Thos.

Brewer, J. D. Butler, Priam B. Hill, James Fagen, and Henry Conklin, twelve free, honest, and lawful men of the district, who were severally sworn, empannelled, and charged by the court. And the said jurors of the jury aforesaid upon their said oaths respectively, do find the several issues in favor of the defendants; and they do further find the property replevined is in Benjamin C. Adams and William P. Adams, as the said defendants have herein pleaded; and they do further find the value of the property replevined to be two thousand six hundred and forty dollars, and do assess the damages for the detention thereof at the sum of four hundred dollars.

And afterwards, at the same term of said court, on the nineteenth day of the term, to wit, on the fourth day of November, A. D. 1850, came the defendants by their counsel, and remitted the sum of two hundred and ninety-nine dollars of the damages assessed by the jury for the detention of the property replevined, so as to leave the said damages the sum of one hundred and one dollars, the interest on the said property from the time of the service of the writ until the time of trial.

Wherefore it is considered and adjudged by this court now here, that the said defendants, Samuel Hale, George C. Manny, and John V. Ayer, do, have, and recover for the use of Benjamin C. Adams and William P. Adams, of the said John Jackson, and Daniel Newhall, Thomas P. Williams, and John Webb, his sureties in the replevin bond, the said several sums of two thousand six hundred and forty dollars, the value of the property replevined so as aforesaid found by the jury, as well as the sum of one hundred and one dollars, the damages aforesaid, together with fifty-one dollars and thirty cents, their costs about their said defence in *in* this behalf by them expended, which said several sums amount in the whole to the sum of two thousand seven hundred and ninety-two dollars and thirty cents, and that they have execution therefor.

Judgment record signed this twelfth day of January, A. D. 1851.
(Signed) GEO. S. WEST, *Clerk*.

Judgment record filed Jan. 12, 1851, at 4 o'clock, p. m.
(Signed) GEO. S. WEST, *Clerk*.

And also, on the twenty-eighth day of October, A. D. 1850, came the said plaintiff and filed his bill of exceptions, as follows:

District court of the United States, for the district of Wisconsin.

JOHN JACKSON
vs.
Samuel Hale,
George C. Manny, and
John V. Ayer.

Be it remembered, that this cause came on for trial at the October special term of this court. This was an action of replevin in the detinet for four thousand bushels of spring wheat, value three thousand

dollars; pleas, first, non detinet, with plea of property in defendants; also plea of property in B. C. Adams and William Adams; also plea of property in Champion I. Hutchinson; also plea of property in other persons in plea named; to which pleas plaintiff replied, re-affirming property in plaintiff and denying property in persons in whom pleaded.

And afterwards, to wit, at a term of said court held at the court room in Milwaukie, in said district, on the 28th day of October, A. D. 1850, before Andrew G. Miller, esquire, judge of said district court, according to the practice of the said court, the aforesaid issues came on to be tried by a jury of the district aforesaid, for the purpose duly empannelled, good and lawful men of said district; at which day came as well the said plaintiff, by C. K. Watkins, his attorney, as the said defendants, by Emmons and Lovell, their attorney, and the jurors of the jury aforesaid empannelled to try said issues being called, also came, and were then and there in due manner chosen and sworn to try said issues.

And upon the trial of the same the counsel for the plaintiff, to maintain and prove said issues on his part, read in evidence from a commission duly taken in the cause for the examination of John M. Faulkner, his testimony, as follows: that the said Faulkner is 36 years of age, and by occupation a produce dealer; that he is acquainted with Champion I. Hutchinson, and has been for two or three years; that he knows the handwriting to said paper subscribed; that said paper writing, marked A, was subscribed by Champion I. Hutchinson in the presence of deponent; it was executed by the said Hutchinson at the time of the date of said paper marked A in said interrogatory mentioned; that said paper writing was delivered to him by said Hutchinson on the day of the date thereof, to wit, on the 19th day of January, A. D. 1850, at Southport, Wisconsin; that he, for and in behalf of Hubbard, Faulkner & Co., paid for the wheat therein mentioned $2,640 to the said Hutchinson at the date of said writing marked "A," at Southport, Wisconsin; that he is acquainted with Hubbard, Faulkner & Co., in said writing named; that said firm was composed of Buckley Hubbard, John M. Faulkner, Lewis B. Austin, George W. Gould, who were partners in trade, at the time of the date of said writing, in the purchase and sale of country produce, and witness is the same person named therein, and was, at the time of the date thereof, a member of said firm of Hubbard, Faulkner & Co.; that he sold and transferred, in behalf of said firm, said paper writing marked "A," commonly called a warehouse receipt, to John Jackson, of Lockport, New York, on the 9th day of March, 1850, at which time this deponent was a member of said firm; that neither he nor the said firm have removed any part of said wheat at any time; that there is no liability of him or said firm in said receipt as vendor or vendors of said wheat; that said firm was discharged by the written agreement of said Jackson on the 9th day of March, 1850, at Milwaukie, in the State of Wisconsin; that he nor said firm have any interest whatever in the event of this suit; which testimony was read, subject to the objection of defendants, previously taken; first, that the witness appeared to be interested, and

that if released by plaintiff, the release should be produced to the court before the testimony could be read; and secondly, that the testimony was irrelevant. The counsel for the defendants then read the testimony of said witness, as follows: To the question, what consideration is referred to in direct examination? Witness says, he supposes the purchase money of the wheat mentioned in said warehouse receipt; that he does not know to whom said receipt belongs, but supposes to John Jackson, to whom he sold and delivered it on the 9th day of March, 1850, for the consideration of $1,056, which amount was all paid by said Jackson at the time of the transfer, as above stated. Said transfer was absolute, and not conditional; that the purchase was made by the plaintiff before C. I. Hutchinson left the State of Wisconsin, but whether it was after he had sold the warehouse in Kenosha (Southport) he is unable to say. This deponent is unable to state whether said plaintiff was knowing to the fact that, at the time he bought said receipt, that C. I. Hutchinson had no wheat in his warehouse to deliver on said receipt or not; does not recollect whether he ever informed said plaintiff whether there was or was not any wheat in said warehouse to be delivered on said receipt. Deponent sold the receipt in question to John Jackson, and him only; that he sold the receipt; that no wheat was ever delivered to him (witness) by C. I. Hutchinson, as called for by said receipt; that neither witness nor said firm referred to ever received or removed any wheat delivered to C. I. Hutchinson, to him, or any one for him, under or by virtue of said receipt, and never had any delivered to him, this deponent, or any one for him, on said receipt; that the terms of the transfer of the said receipt was $1,056 cash in hand at the time of sale; that deponent is not interested in the event of this suit in any manner; that witness sold the receipt referred to, and all the interest of Faulkner & Co. therein; and in answer to a question whether he sold the wheat mentioned in receipt, or simply the receipt, said I sold the receipt.

Copy paper referred to marked "A."

"Received into store, Southport, January 19, 1850, for account of Messrs. Hubbard, Faulkner & Co., four thousand bushels of spring wheat, deliverable on board vessel free of charge on return of this receipt, and not insured against fire.

4,000 bushels wheat. C. I. HUTCHINSON.

Endorsed Hubbard, Faulkner & Co.

Lewis Hyde was then sworn as a witness on the part of plaintiff, and testified that he was acquainted with Champion I. Hutchinson last winter; that said Hutchinson was a warehouse-man at Kenosha, storing wheat; that he absconded from there on the 29th day of March last; that the defendants succeeded him in the possession of the warehouse; that there was wheat in the warehouse at the time—about twenty-two thousand bushels of spring wheat; it remained there after

defendants took possession of the warehouse in different bins; I was present when the marshal took the wheat on this writ, assisting him; the wheat taken by the writ was spring wheat; seven or eight thousand bushels of spring wheat had been taken away before delivery on the writ herein; that when deposites were made the deposites were mixed in a general mass by consent of depositors; that on the 20th day of February Hutchinson weighed up the wheat, and set it apart to some of the depositors.

On cross examination witness testifieth, that he assisted the marshal at his request. The counsel for the defendant, for the purpose of showing title to the wheat in question in Benjamin C. Adams and William P. Adams, proposed to prove that said Adams and Adams had deposited wheat with Hutchinson, and that all deposites in the warehouse were in common mass; that out of such deposites Hutchinson had set apart to said Adams and Adams a quantity equal to the amount by them deposited. But to the admission of the matter, as offered for that purpose, the counsel for the plaintiff did then and there object, because a setting apart by a bailee of the property of his bailors, deposited in mass, confers no title upon one bailee as against another; that a bailee cannot, by any act of his own, change the respective rights of his several bailors, and that the matters offered would not be evidence of title. But the judge of the court did then and there declare, and deliver his opinion, that the said proposed proof was proper to be given in evidence as aforesaid. To which said decision and opinion the counsel for the plaintiff did then and there except. The witness then stated that Adams & Son were at the storehouse while Hutchinson was in possession, and was transferring the possession to Hale, Manny & Co., and that other persons were there; and that the wheat in store was then weighed off and put into bins for depositors, as follows:

5,000 bushels were put in a bin for J. M. Boalt.

7,000 bushels were put into a bin for Adams & Son.

3,911 bushels to Hale, Manny & Co.

2,050 bushels to Goodyear & Co.; but this last was set apart at a later time; and also 8,338 bushels to Head, Campbell and Head, together with 800 to Edward English. At the time of such setting apart to Adams & Son, C. I. Hutchinson, Samuel Hale, J. M. Boalt, B. C. Adams, J. K. Lee, and L. C. Hyde were present. Hale, Manny & Co. were taking possession of the warehouse at this time, February 22, 1850. B. C. Adams and William Adams make the firm of Adams & Son. Receipts were surrendered at the time of the said delivery made to them as aforesaid. Adams & Son had made deposites at different times, in small quantities, amounting in all to 7,000 bushels. That 7,000 bushels *was* taken from the general deposites in the warehouse and put by itself in a separate bin. That the marshal took wheat, on the writ in this case, out of the bin of 7,000 bushels, which had been so set apart to B. C. Adams & Son. The counsel for defendant then proposed to prove that Faulkner & Co. never deposited any wheat in the warehouse; to which evidence the counsel for plaintiff

did likewise object: because such proof was in contradiction of the special receipt of defendant Hutchinson, which is the nature of a special contract; also, because it was not competent to be proven by this witness. But the court decided and declared the opinion that the testimony was proper and should be given in evidence; to which opinion the counsel for plaintiff did then and there except; and witness stated that Hubbard, Faulkner & Co. had not deposited wheat there; that there *was* no depositors of wheat then in a separate bin, except for Hale, Manny & Co.

On direct examination resumed, witness said that the wheat was set apart to Adams & Son on the 22d of February, and put in a separate bin, and was assigned to them so separated on the fourth of March last; that Adams & Son's wheat had been deposited promiscuously with other wheat in the warehouse; that the wheat deposited by Adams & Son was winter wheat, spring wheat, and mixed wheat; that the wheat in the warehouse had all been mixed up together before the setting apart took place, as I have stated. Wheat was worth sixty-five cents when taken on the writ.

The counsel for defendant then offered to prove, among other facts and circumstances, for the purpose of showing that the plaintiff had acted wilfully, and to entitle them to exemplary damages, that Watkins & Newhall, agents of plaintiff, had been informed that the wheat about to be taken on the writ was not the wheat of plaintiff. To which matter the counsel of plaintiff did except, because it was not evidence of such purpose, and tended to prejudice the plaintiff's right of recovery; but the judge decided that it might be pertinent for the purpose for which offered, and admitted the proof, but how far it made evidence, or if any, it was unnecessary then to decide; to which plaintiff then and there excepted; and witness stated that they were informed that the wheat belonged to Adams & Son. The defendants then admitted a demand made by the plaintiff of the wheat, and defendants refused to deliver it; and plaintiff rested his cause.

On the part of the defendants, T. P. Williams was called and sworn as a witness, and testified that he knew the plaintiff; that he purchased a wheat receipt of Hubbard & Co. The one produced and annexed to the commission is the one.

Daniel Newhall was then sworn as a witness on the part of the defendants, and testified that he is the person who made the affidavit for the writ. I was at Kenosha when the writ was served—not before it was served; was there but once; the affidavit was made before I went down; I went as the agent of the plaintiff. Did you give directions to the marshal? (Objected to by plaintiff, overruled by court.) Answer. I did; don't know as I hesitated out of which bin to take it; Hale said he had wheat in a certain bin, and the wheat was taken from another bin.

The defendants then offered to show how much wheat rose in value in the month of May or June, after the taking of the wheat under the writ; to which plaintiff objected, and the court decided not to receive

the proof. The counsel for defendants then offered to prove that wheat did rise in value; to which plaintiff objected, because the proof tended to betray the jury, and leave the question of value to vague speculation. But the court decided and declared [its] opinion to receive the proof, to which plaintiff then and there excepted, and witness answered that wheat did rise in value. Said issue was then and there submitted to the jury, and a verdict returned as follows: The said jurors of the jury aforesaid did find the several issues in favor of the defendants, and they did further find the property replevined is in Benjamin C. Adams and William P. Adams, as the said defendants have herein pleaded; and they did further find the value of the property replevined to be two thousand six hundred and forty dollars, and did assess the damages for the detention thereof at four hundred dollars.

And the said judge, after the jury had delivered their said verdict and retired, consented that the counsel for defendants remit thereupon all damages found for the detention of said property exceeding the interest on the value as proven, from the day of the service of the writ until the day of trial, or that a new trial would be granted, and not otherwise. The defendants' counsel did thereupon remit as aforesaid. To all of which matters aforesaid the plaintiff did then and there except; and because none of said exceptions do appear upon the record of the said trial, therefore, on the prayer of the said plaintiff by his counsel, the said judge put his seal to this bill of exceptions, according to law and the practice of this court, this 28th day of October, A. D. 1850, as settled.

(Signed) A. G. MILLER. [L. S.]

And whereas, also, on the fourth day of November, A. D. 1850, a writ of error was issued, and also a citation and copy of the writ of error lodged, in pursuance of the statute of the United States in such case made and provided, for the above named Samuel Hale, George C. Manny, and John V. Ayer, defendants in error. And, also, on the twentieth day of November, A. D. 1850, a bond was filed, with Daniel Newhall, William B. Hibbard, and Thomas P. Williams as sureties, in the penalty of four thousand dollars, conditioned that the above named John Jackson shall prosecute his said writ of error to effect, and answer all damages and costs if he shall fail to make good his plea; and same day the said bond was endorsed by the judge as follows: Nov. 20, 1850, approved, A. G. Miller, judge. And the said citation was returned served on Samuel Hale, personally and by copy, November 30, 1850; and served on George C. Manny, personally and by copy, December 5, 1850; and served on John V. Ayer, personally and by copy, December 6, 1850, as by the said citation and return thereon, and hereto annexed, more fully and at large appears.

B. K. MILLER, *Clerk.*

UNITED STATES OF AMERICA, *ss.*

To Samuel Hale, George C. Manny, and John V. Ayer, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the district court of the United States of America, for the district of Wisconsin, wherein John Jackson, is plaintiff, and you are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable Andrew G. Miller, judge of the district court of the United States, for the district of Wisconsin, this fourth day of November, in the year of our Lord one thousand eight hundred and fifty, and of the independence of the United States the seventy-fifth.

A. G. MILLER.

Fees—Service of writ on 2 def'ts - - -	$4 00
Travel - - - -	1 75
2 copies, 2s. - - - -	50
Return - - - - -	12½
	$6 37½

STATE OF WISCONSIN,
Kenosha county, ss.

Isaac N. Stoddard, of said county, being duly sworn, saith, that on the thirtieth day of November, A. D. 1850, he did personally serve on the within named Samuel Hale a copy of the within citation, by delivering of a copy to him, and at the same time showing to him the within original, under the hand of the judge thereto subscribed; and further saith not

I. N. STODDARD.

Subscribed and sworn this 6th day of December, 1850, before me,
VOLNEY FRENCH,
Notary Public, State of Wisconsin.

STATE OF WISCONSIN,
Kenosha county, ss.

Wallace Mygatt, of said county, being duly sworn, saith, that on the fifth day of December, A. D. 1850, he did personally serve on the within named George C. Manny a copy of the within citation, by delivering of a copy to him, and at the same time showing to him the within original, under the hand of the judge thereto subscribed. And further, that he did, on the sixth day of December, A. D. 1850, personally serve on the within named John V. Ayer a copy of the within citation, by delivery of a copy to him, and at the same time show-

ing to him the within original, under the hand of the judge thereto subscribed; and further saith not

WALLACE MYGATT,
Deputy U. S. marshal.

Subscribed and sworn before me, this 6th day of December, 1850.

VOLNEY FRENCH,
Com'r U. S. dist. court, for district of Wisconsin.

To be returned.

UNITED STATES OF AMERICA, *ss.*

The President of the United States of America, to the judge of the district court of the United States, for the district of Wisconsin, greeting:

[SEAL] Because in the record and proceedings, as also in the rendition of a judgment in a plea which is in the said district court of the United States of America, for the district of Wisconsin, before you, between John Jackson and Samuel Hale, George C. Manny and John V. Ayer, a manifest error hath happened to the great damage of the said John Jackson, as by his complaint appears; and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court of the United States, this fourth day of November, in the year of our Lord one thousand eight hundred and fifty, and of the independence of the United States the seventy-fifth.

GEO. S. WEST, *Clerk.*